Supreme Court, U.S.
FILED
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(1)

No. 03-942

In The

Supreme Court of the United States

BETTY C. DAHLQUIST, Pro Se,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Washington State Supreme Court

PETITION FOR A WRIT OF CERTIORARI

BETTY C. DAHLQUIST
Pro-Se, Petitioner
15238 SE 272 Street
Kent, WA 98042
253-631-2906

QUESTIONS PRESENTED

Whether the rulings of the Washington Courts that there was no contract between Patrick Vukich and the Estate of Fred and Cecil Martel of whom Betty Dahlquist is the successor is in effect an impairment of the obligation of contracts?

Whether the rulings by the Superior Court granting partial summary judgment on liability and the rulings of the Washington Court of Appeals affirming the grant of summary judgment and the Washington Supreme Court denying review is a denial of equal protection of the law Fourteenth Amend. U.S. Const., by denying Dahlquist the right to amend her complaint, join other parties with an interest in the property with some additional claims and defenses, and the right to discovery and to present evidence of a contract within the chain of title in violation of Dahlquist's right of the "freedom of contract?" Article 1, § 10 of the United States Constitution.

Whether a law (these rulings) impairs the obligation of a contract created under RCW 4.16.040 or RCW 4.16.020?

Whether by denying Dahlquist the opportunity to discover evidence changing its terms, its legal qualities and conditions, or by regulating the remedy for its enforcement the Washington Courts have engaged in an action to "impair the obligation of a contract," within prohibition of Article 1, § 10, of the United States Constitution, that is to weaken it, lessen its value in any respect or in any degree?

QUESTIONS PRESENTED – Continued

Whether these rulings by the Washington Courts changed the intention and legal effect of the parties, giving to one (Mr. Vukich) a greater and to the other (Betty Dahlquist, Fred Martel and Cecile Martel) a lesser interest or benefit, or which imposes conditions not included in the contract or dispenses with the performance of those included and thereby impairs the obligation of the contract thus creating, a justiciable controversy, Article III, § 2 of the United States Constitution?

PARTIES TO THE PROCEEDINGS

Petitioner is Betty C. Dahlquist, Pro-Se.

Respondent is Patrick G. Vukich.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceedings	iii
Table of Contents	iv
Table of Authorities	v
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement	2
Reasons for Granting Petition	4
Conclusion	13
Appendix A	App. 1

TABLE OF AUTHORITIES

Page

CASES

Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937) 8

Alverson v. Hooper, 108 Wash. 510, 185 P. 808 (Wash. 1919) 13

Columbia Gorge Audobon Society v. Klickitat County, 98 Wn.App. 618, 989 P.2d 1260, (Wash.App. Div. 3 1999) 10

El Cerrite, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962) 12

Empire South, Inc. v. Repp, 51 Wn.App. 868, 756 P.2d 745 (Wash.App. Div. 3 1988) 8

Escalante v. Sentry Ins., 49 Wn.App. 375, 743 P.2d 832 (Wash.App. Div. 1 1987) 11

Foltz v. Pullman, Inc., Del. Super., 319 A.2d 38 (1974) 8

Gerrard v. Craig, 122 Wn.2d 288, 857 P.2d 1033 (Wash. 1993) 10

Michigan National Bank v. Olson, 44 Wash.App. 905, 723 P.2d 438 (1986) 7

Reygo Pacific Corp. v. Johnston Pump Co., 680 F.2d 647 (9th Cir. 1982) 11

Riley v. Andres, 107 Wn.App. 391, 27 P.3d 618 (Wash.App. Div. 2 2001) 7

Ruff v. County of King, 125 Wn.2d 697, 887 P.2d 886 (Wash. 1995) 13

Springfield Fire & Marine Ins. Co. v. Holmes, 32 F. Supp. 964 (D.C. Mont. 1940) 13

TABLE OF AUTHORITIES – Continued

Page

State v. Brennan, 76 Wn. App. 347 (Wash. 1994).....12

State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S.Ct. 443 (U.S. 1938)..... 5

Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 89 S.Ct. 518 (U.S.N.C. 1969)..... 6

U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505 (U.S.N.J. 1977)..... 6

Wilson v. Steinbach, 98 Wash.2d 434, 656 P.2d 1030 (1982)..... 7

CONSTITUTION AND STATUTES

United States Constitution:

Article I, Section 10, clause 1.....1, 5, 13

Article III, Section 2, clause 1.....2, 8

Amendment XIV 5

Revised Code of Washington 4.16.020.....2, 13

Revised Code of Washington 4.16.040.....2, 13

PETITION FOR A WRIT OF CERTIORARI

Ms. Betty Dahlquist-pro se, respectfully petitions for a writ of certiorari to review the judgment of the Washington State Supreme Court in this case.

OPINIONS BELOW

The opinion of the Washington Supreme Court (App. A, infra, 1a) is reported at 77 P.3d 651 (Table), 150 Wash.2d 1002. The opinion of the Washington Court of Appeals (App., infra, 2a-3a) is an unpublished opinion reported at 114 Wash.App. 1064. The order of the Washington Superior Court granting respondents' motion for summary judgment (App., infra, 4a-6a) is unreported.

JURISDICTION

The judgment of the Washington State Supreme Court was entered on September 30, 2003. (App., infra, 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10 of the United States Constitution provides in relevant part that "No State shall . . . make

. . . or Law impairing the Obligation of Contracts, . . .

. . . freedom of contract a basic right reserved to the people by the constitution . . . "

Article III, section 2 of the United States Constitution provides in relevant part that "The judicial power shall extend to all cases, in Law and Equity . . . to controversies . . . between citizens."

Fourteenth Amendment of the United States Constitution provides in relevant part that "no persons shall be denied equal protections of the law."

Revised Code of Washington 4.16.020 actions limited to ten years.

Revised Code of Washington 4.16.040 actions limited to six years.

STATEMENT

This case involves Respondent Vukich (plaintiff in the original action) who brought this action as a Complaint to Quiet Title and for Slander of Title and Contempt of Court.

Petitioner Dahlquist answered on May 5, 2000, seeking equitable relief "Equity acts in personam."

Both parties engaged in and made a first set of interrogatories on May 31, 2000, both answered on June 30, 2000. Dahlquist propounded a second set of interrogatories on July 7, 2000 that were resent on August 23, 2000, to which no reply was received by Dahlquist. At the status conference the Plaintiff's attorney indicated that he would provide answers by January 31, 2001. No answers were received and Dahlquist filed a motion to compel proper answers and to answer interrogatories, set for February 23, 2001. Vukich responded on February 21, 2001 and Dahlquist replied February 22, 2001 in part to

reschedule for oral argument. The motion was denied. Dahlquist made a request to have the court reschedule the motion hearing again with oral argument dated May 5, 2001, filed a motion again set for June 12, 2001 without oral argument requesting in part to reschedule for oral argument dated June 1, 2001, the plaintiff responded June 7, 2001 and said motion to reschedule for oral argument again was denied.

Dahlquist's Interrogatories and Requests for Production were not responded to and the Motion to Compel Discovery was not granted.

Defendant's son Daryl Dahlquist made a motion to intervene; which was denied. Dahlquist made a motion to amend her answer and to join other parties with an interest in the property CR 19(a) 20 and 21 with some additional claims and defenses and to add cross-claim defendants, which was denied.

A motion for partial summary judgment was made by Vukich and granted on liability, limiting the trial to damages. Dahlquist Respondent, Plaintiffs motion was granted on August 31, 2001 Dahlquist put in her motion for reconsideration dated September 7, 2001 it was denied and Dahlquist filed a notice of appeal.

Trial to the Court, Judge Lum, was conducted on December 17, 2001, and resulted in a judgment in favor of the Plaintiff in the amount of $64,000.

The Washington Court of Appeals held that previous adjudication already determined that Dahlquist's son Daryl had no interest or claim to the Vukich property and further found that nothing had changed so as to give him an interest in the property.

The Washington Court of Appeals held that the trial court properly denied the request for intervention as a matter of right.

The Washington Court of Appeals further held that the interrogatories [propounded by Dahlquist] were irrelevant because they sought information regarding previously concluded litigation and that the trial court correctly denied the motion to compel.

Dahlquist filed a motion to amend her twenty day response set for May 30, 2001 to add all necessary parties CR 19(a) 20 and 21 with some additional claims and defenses Plaintiff responded on May 25, 2001 Dahlquist put in her final response May 29, 2001 the motion was denied and was never addressed.

The Washington Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

The Washington Court of Appeals held that previous adjudication already determined that Dahlquist's son Daryl had no interest or claim to the Vukich property and further found that nothing had changed so as to give him an interest in the property. The trial court properly denied the request for intervention as a matter of right.

Dahlquist v. Vukich, 2002 WL 31813998, 2 (Wash.App. Div. 1, 2002)

The Washington Court of Appeals further held that the interrogatories [propounded by Dahlquist] were irrelevant because they sought information regarding

previously concluded litigation and that the trial court correctly denied the motion to compel.

Dahlquist v. Vukich, 2002 WL 31813998, 3 (Wash.App. Div. 1, 2002)

The interrogatories propounded by Dahlquist were designed to elicit information on the creation of the contract by the course of correspondence between Fred Martel (predecessor in interest to Dahlquist) with reference to the six year statute of limitations or in the alternative to prove the adverse nature of the possession of the property and the duration of the possession by Martel and Dahlquist in regards to the ten year statute of limitations and information about the ("two dismissal rule"), the 5-19-97 Gas Line Incident, Fred and Cecile Martel's title insurance and community property agreement, Vukich Real Estate Contract and his own contributory negligence for breaching all these contracts.

A. Article I, Section 10 provides that no State may change the terms under which a contract is created or the rules under which it is enforced.

Since the amendment of the judiciary act of 1789 [FN4] by the act of February 5, 1867 [FN5] it has always been held this Court may examine the opinion of the state court to ascertain whether a federal question was raised and decided, and whether the court rested its judgment on an adequate nonfederal ground.

State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 98-99, 58 S.Ct. 443, 445 (U.S. 1938)

B. Review is also warranted because the Washington Supreme Court erred in failing to analyze this case in light of the Contracts Clause of the United States Constitution.

> As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 25-26, 97 S.Ct. 1505, 1519 (U.S.N.J. 1977)

Although the constitutional prohibition of the impairment of contracts, U.S. Const., Art. 1, § 10, applies only to the States, we have held that '(v)alid contracts are property, whether the obligor be a private individual, a municipality, a State of the United States.

Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 279, 89 S.Ct. 518, 524 (U.S.N.C. 1969)

C. The Washington Court of Appeals and Washington Supreme Court refused to look at the manner in which the Superior Court addressed the response to summary judgment the discovery requests as well as the motion to add parties etc., by Dahlquist, and by failing to address Dahlquist's requests denied her the equal protection of Washington State law, Fourteenth Amendment.

> The Andres contend that they raised issues of material fact relevant to the elements of adverse possession that should have precluded

> summary judgment. We review a summary judgment de novo, engaging in the same inquiry as the trial court. Wilson v. Steinbach, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. CR 56(c); Wilson, 98 Wash.2d at 437, 656 P.2d 1030. We construe the facts and all reasonable inferences in the light most favorable to the nonmoving party. Wilson, 98 Wash.2d at 437, 656 P.2d 1030. And where material facts are particularly within the knowledge of the moving party, courts have been reluctant to grant summary judgment. See Michigan Nat. Bank v. Olson, 44 Wash.App. 898, 905, 723 P.2d 438 (1986). In such cases, "it is advisable that the cause proceed to trial in order that the opponent may be allowed to disprove such facts by cross-examination and by the demeanor of the moving party while testifying." Olson, 44 Wash.App. at 905, 723 P.2d 438 (quoting Felsman v. Kessler, 2 Wash.App. 493, 496-97, 468 P.2d 691 (1970)).

Riley v. Andres, 107 Wn.App. 391, 395, 27 P.3d 618 (Wash.App. Div. 2 2001)

Whether the fact of the expiration of the six year statute of limitations on enforcement of an agreement, relating to the land in issue, between the Plaintiff and Defendant's predecessor in interest dated May 5, and June 3, 1977, was a material fact relating to liability?

As forms of written agreements of May 5 and June 3, 1977 establish an understanding as to the future disposition of the real property at issue in this case and as partial confirmation of the intent to remove.

. . . all contracts contain an implied covenant of good faith." Jones, at 329, 560 P.2d 348 (citing Miller v. Othello Packers, Inc., 67 Wash.2d 842, 844, 410 P.2d 33 (1966)).

Empire South, Inc. v. Repp, 51 Wn.App. 868, 882, 756 P.2d 745 (Wash.App. Div. 3 1988)

Whether the "two dismissal rule" is satisifed by the dismissal of civil cause 91-2-14190-8, in which Mr. Vukich attacked the stipulated decree, was the Plaintiff and Betty Dahlquist a named Defendant, and the denial of his motion to dismiss cause 87-2-15848-9 in which Mr. Vukich was the Defendant who brought the motion attacking the stipulated decree and Betty Dahlquist the Plaintiff who responded case dismissed, motion denied?

Whether the Defendant's signature on Stipulated Decree from Cause No. 87-2-15848-9 was obtained by duress was a material fact relating to liability.

United States Constitution, Article III, § 2 "justiciable controversy." Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239, 57 S.Ct. 461, 463, 81 L.Ed. 617 (1937). C.R. 9(k)(1). C.R. 41(a)(4) is addressed as well as Fed. R. Civ. P. 17(a), a guardian, executor, and the like may sue in his own name without joining the party for whom the action is brought.

Mutuality of Estoppel Doctrine where this doctrine, dictates that, "A judgment will not be held conclusive in favor of one person unless it would be conclusive against him had the case been decided the other way." Foltz v. Pullman, Inc., Del. Super., 319 A.2d 38, 41 (1974). CR 9(k)(1).

Dahlquist asserted that she was mislead by her attorney in the 1987 action as to the effect that the decree

would have. She believed that the matter was to be terminated with prejudice in her favor as stated by the trial court, but under pressure from her attorney to stipulate to a result to the advantage of the Plaintiff she signed a stipulation that underlies this action. Reinstatement, second contract §§ 174, 175. As a defense to a civil action it must be pleaded affirmative. Fed. R. Civ. P. 8(c).

As in Yakama Nation, infra, Daryl Dahlquist made a timely motion to intervene.

Daryl Dahlquist was granted an interest in the chain of title to the property by the quitclaim deed signed by Defendant predecessor in interest, Cecil Martel. Defendant also acted in her capacity not only as guardian for Fred Martel putting Dahlquist in the chain of title but later as the trustee of the trust created from the estate of Cecile Martel that also put Dahlquist in the chain of title.

After Daryl Dahlquist's motion was later denied Defendant previously had made a motion to amend her complaint to add additional parties CR 19(a) 20 and 21 as well as to make Daryl Dahlquist a cross-claim Defendant, reflecting his interest in the property at issue.

> The Yakama Nation's motion to intervene was filed September 25, 1995. This was before the hearing of the petition and before any substantive ruling.
>
> The claim of right to intervene was thus raised prior to trial and judgment, and was thus timely. This makes sense. To interpret CR 24 as permitting intervention only by those with a perfected or perfectible independent cause of action is to render the rule meaningless.

Columbia Gorge Audobon Society v. Klickitat County, 98 Wn.App. 618, 624, 989 P.2d 1260 (Wash.App. Div. 3 1999)

Daryl Dahlquist also had an undivided interest for equitable relief in the chain of title with the property at issue in this action and was therefor a necessary party, who had a significant asset at risk in the action. The opportunity to benefit from the evidence on the satisfaction of the ten year statute of limitations as well as the opportunity to benefit from the six year statute of limitations etc.

Cecile Martel's trust (of which Defendant is the trustee) is clearly a party to the action as Defendant in signing quit claim deeds was acting in her capacity as trustee of the trust.

> In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages, including the claimant . . . , defendants, third-party defendants, entities released by the claimant, entities immune from liability to the claimant and entities with any other individual defense against the claimant. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages.

Gerrard v. Craig, 122 Wn.2d 288, 292, 857 P.2d 1033 (Wash. 1993)

The trial court should give broad scope to discovery requests that have the potential to generate or lead to relevant evidence. As in Escalante, infra, there is silence as to the trial court's reason for denying the motion to compel. They clearly were not burdensome as Plaintiff had stated that he would complete responses to them, but later refused to respond.

> Though the record is silent as to the trial court's reasons for denying the motion to compel discovery, the fact that the court imposed terms against appellants' counsel indicates that the court felt the motion was not justified. CR 37(a)(4). Thus, it may be that the court found the interrogatories were overly broad and burdensome. However, after reviewing the record, we have concluded that most of the challenged interrogatories and requests are not overly broad or burdensome, and that the motion to compel was substantially justified. CR 37(a)(4). The few overly broad requests do not justify either the imposition of terms, or the complete preclusion of discovery. See Reygo Pacific Corp. v. Johnston, Pump Co., 680 F.2d 647, 649 (9th Cir.1982).
>
> . . . Therefore, for the reasons stated above and in the discussion that follows, we hold that the trial court abused its discretion in imposing terms and in denying the motion to compel.

Escalante v. Sentry Ins., 49 Wn.App. 375, 391-392, 743 P.2d 832 (Wash.App. Div. 1 1987)

The expiration of the six year statute of limitations on enforcement of an agreement, relating to the land in issue, between the Plaintiff and Defendant's predecessor in interest dated May 5, and June 3, 1977, is a material fact

relating to liability as it relates to the relationship the parties have with the real property at issue in this case.

Daryl Dahlquist (son of Petitioner Dahlquist) has a claim to an undivided interest in the property at issue and is a necessary party to the action. Daryl did 8½ months in jail, then the order was declared Null and Void, Vacated. Equity suffers not a right without a remedy. State v. Brennan, 76 Wn. App. 347 (Wash. 1994).

Whether Betty Dahlquist's predecessor in interest, Fred Martel and/or Cecile Martel, satisfied the requirements to claim title by adverse possession, specifically satisfying the ten year statute of limitations? Possession of property in adverse manner for period of "ten years" ripens into an original title which can be divested only by such acts as are required to divest title acquired by deed. El Cerrito, Inc. v. Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962).

Cecile Martel is named in the chain of title of the property at issue in this case by title insurance as well as by deed from her husband Fred Martel and that relationship leads to Petitioner Dahlquist's authority to issue deeds relating to Cecile Martel's property as trustee of the trust created by Cecile Martel. Cecile Martel's estate or the trust created by Cecile Martel is a necessary party to this action.

D. The Washington Supreme Court's decision to not grant review, effectively affirmed the Court of Appeals decision affirming the Superior Court's granting partial summary judgment on liability.

This Court by its ruling is impairing the obligation of the contract as is noted in the letter dated April 12, 1999,

the letters of May 5, 1977 and June 3, 1977 and July 12, 1977, Ex. I.I, 2 and 3 equal ER 803(a)(20), Alverson v. Hooper, 108 Wash. 510, 185 P. 808 (1919). For the purpose of a Motion for Summary Judgment, a "material fact" is one that affects the outcome of the litigation. Ruff v. County of King, 125 Wn.2d 697, 887 P.2d 886. All this is in harmony with freedom of contract, a basic right reserved to the people by the Constitution (Art. 1, § 10) that a state cannot violate even under sanction of direct legislative act, CR 9(k)(1), Springfield Fire & Marine Ins. Co. v. Holmes, 32 F. Supp. 964, 987 (D.C. Mont. 1940).

E. The Washington Court of Appeals and the Washington Supreme Court engaged in no constitutional analysis on the equal protection of the laws as they should be applied in enforcing RCW 4.16.020 Actions limited to ten years and RCW 4.16.040 Actions limited to six years, the statutes stating the limitations on Actions for possession of land and for written contracts.

F. No further proceedings in the lower courts are needed to clarify the question presented or to render that question suitable for resolution by this Court.

CONCLUSION

Denial of Dahlquist's response to summary judgment and her Motion To Amend her 20 day response and to Compel Discovery denied Dahlquist access to potentially relevant information. The trial court judge abused his discretion in denying Dahlquist's response to summary judgment and her Motion to Amend her 20 day response and to compel discovery.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 29, 2003

APPENDIX

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED

/s/ Mary Kay Becker

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

DIVISION I

BETTY C. DAHLQUIST,	)	NO. 48974-7-1
Petitioner,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
PATRICK G. VUKICH,	)	
	)	
Respondent.	)	FILED DEC 16 2002

PER CURIAM. Betty Dahlquist appeals from a trial court order on summary judgment finding her in contempt of a 1990 stipulated decree in which she agreed not to interfere with the property rights of her neighbor, Patrick Vukich. Because there was no issue of material fact regarding her liability, we affirm the order of summary judgment. We also affirm the denial of Dahlquist's son's motion to intervene and Dahlquist's motion to compel discovery.

This appeal arises from a history of litigation between adjacent landowners dating back to the 1970s. The record shows that at that time, Fred and Cecile Martel, Betty Dahlquist's stepfather and mother, owned a parcel of real property that shared a common boundary with a lot owned by Patrick Vukich. In 1977, Vukich and the Martels became embroiled in a boundary dispute when Vukich

discovered that a mobile home owned by the Martels straddled the common boundary.

After obtaining an interest in the Martel property, Betty Dahlquist and Aura Pell, the owner of another lot adjacent to the Vukich property, filed suit against Vukich in 1987. Dahlquist and Pell alleged that they had acquired interests in the Vukich property through acquiescence, adverse possession, or alternatively, an easement by prescription. Following a bench trial, the trial judge orally ruled that Dahlquist and Pell had failed to establish any claim to the Vukich property and quieted title in favor of Vukich. But the trial judge died before formal findings and conclusions could be completed.

In April 1990, Dahlquist, Pell and Vukich signed a stipulated decree in which they agreed that no party had acquired rights in the property of the other. The decree provided that "each party and anyone claiming through or on behalf of each party is enjoined from trespassing upon, damaging or interfering with the property of the other parties."

Dahlquist later moved to rescind the decree on the basis that her attorney had coerced her into signing it. Vukich responded by pointing out that the trial court had clearly ruled in favor of Vukich on all claims and that the parties had entered into the decree to avoid the expense of transcribing the trial. The trial court denied the motion to rescind the decree.

In April 1991, Dahlquist executed a quit claim deed that purported to transfer an interest in the Vukich property to Cecile Martel. Dahlquist signed the deed on behalf of her stepfather, Fred Martel, claiming to be his court appointed guardian, when in fact, Fred Martel had

died in 1987. The following day, Cecile Martel executed a quit claim deed purporting to transfer the Vukich property to Dahlquist's son, Daryl Dahlquist.

These events led Vukich to bring a lawsuit against Cecile Martel and Daryl Dahlquist in 1993. Dahlquist and Martel counterclaimed that they had gained interests in the Vukich property through prescription and adverse possession.

The trial court granted summary judgment in favor of Vukich in 1995. The court found that Daryl Dahlquist and Cecile Martel were bound by the stipulated decree as successors in interest to Betty Dahlquist. The court ruled that Dahlquist and Martel's counterclaims were the same claims resolved by the 1990 stipulated decree and could not be re-litigated. The trial court found that Dahlquist and Martel presented no facts supporting any new and independent claims to Vukich's property.

The trial court decreed the two quit claim deeds to be null and void. The court also ruled that neither Daryl, Martel, nor any successor to them had any right or interest in the Vukich property. The trial court also permanently enjoined Daryl and Martel from "clouding or encumbering title on, changing assessment information on, or otherwise interfering with Patrick Vukich's quiet enjoyment" of his property.

In August 1998, Betty Dahlquist executed another quit claim deed purporting to transfer Martel's interest in the Vukich property to herself. Dahlquist recorded the deed. She also caused the King County Tax Office to merge her tax lot with Vukich's tax lot. As a result, Vukich's tax lot was temporarily extinguished. When Vukich attempted

to sell his property in 1999, the deal fell through because it appeared that he no longer owned the property.

In April 2000, Vukich filed suit against Betty Dahlquist. The complaint sought to quiet title to the Vukich property, damages for slander of title, and an order finding Dahlquist in contempt of the stipulated decree.

Dahlquist's son moved to intervene in the lawsuit. The trial court denied the motion on the basis that it had been previously adjudicated that Daryl had no interest in Vukich's property. Betty Dahlquist also moved to compel answers to her interrogatories. The trial court denied the motion.

On Vukich's motion for partial summary judgment, the trial court ruled, based on the previous adjudications, that Betty Dahlquist had no interest in Vukich's property and once again quieted title in favor of Vukich. The trial court found Dahlquist in violation of the 1990 stipulated decree for interfering with Vukich's property. The court also found her in contempt of the 1995 summary judgment order to the extent that she was purporting to act on behalf of Martel when she executed the 1998 quit claim deed. Betty Dahlquist has appealed from these rulings.

Dahlquist's briefing is largely incomprehensible, and the state of the record she has provided is equally troubling. In many places, the pages of documents are out of sequence and do not appear to relate to one another. To the extent these problems created by the appellant do not

altogether preclude review, we conclude that Dahlquist's appeal is without merit.[1]

Dahlquist contends that the trial court erred when it denied her son's request to intervene as a matter of right. Intervention as of right shall be permitted only when the applicant claims "an interest relating to the property or transaction which is the subject of the action". CR 24(a). A denial of intervention as of right is reversible only if an error of law has occurred. *Westerman v. Cary,* 125 Wn.2d 277, 302, 892 P.2d 1067 (1994). An error of law is an error in applying the law to the facts as pleaded and established. *Westerman,* 125 Wn.2d at 302.

Dahlquist contends that her son had an unspecified "claim" to the Vukich property. But as the trial court found, previous adjudication already determined that Daryl had no interest or claim to the Vukich property. Nothing has changed so as to give him an interest in the property. The trial court properly denied the request for intervention as a matter of right.

Dahlquist also contends that permissive intervention was appropriate. Permissive intervention may be allowed where the applicant's claim or defense and the main action have a question of law or fact in common. CR 24(b)(2). We review a trial court's denial of permissive intervention for an abuse of discretion. *Westerman,* 125 Wn.2d at 304. Here, there were no common questions of law or fact.

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[1] In his responsive brief, Vukich requests this court to dismiss Dahlquist's appeal for an alleged failure to pay for the clerk's papers. Dahlquist has since paid the fee and the clerk's papers have been transmitted.

Daryl had no interest in the Vukich property. The trial court properly denied permissive intervention.

Dahlquist also assigns error to the trial court's denial of her motion for leave to amend to add her son as an additional party. However, Dahlquist provides no argument in her briefing. The trial court denied the motion on the same basis that it denied the motion to intervene – that Daryl Dahlquist had no interest in the Vukich property. We find no error.

Dahlquist also contends that the trial court erred when it denied her motion to compel answers to her interrogatories. Under CR 26(b), a party may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. We review a trial court's discovery ruling for an abuse of discretion. *Doe v. Puget Sound Blood Ctr.,* 117 Wn.2d 772, 778, 819 P.2d 370 (1991).

Dahlquist argues that the trial court abused its discretion by not giving reasons for denying her motion to compel. But as the trial court's order explains, the vast majority of Dahlquist's interrogatories were directed at the substance of the 1990 adverse possession lawsuit involving Dahlquist, Vukich and Pell.

These interrogatories were irrelevant because they sought information regarding previously concluded litigation. The trial court correctly denied the motion to compel.

Dahlquist contends that the trial court erred when it granted partial summary judgment in favor of Vukich on the issue of liability. An appellate court reviews a trial court's grant of summary judgment *de novo*, engaging in the same inquiry as the trial court and viewing the facts

and the reasonable inferences from those facts in the light most favorable to the nonmoving party. *Wilson v. Steinbach,* 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). A fact is "material" if it affects the outcome of the litigation. *Ruff v. King County,* 125 Wn.2d 697, 703, 887 P.2d 886 (1995).

Dahlquist claims that summary judgment was improper because there is an issue as to whether Vukich moved a fence and a power pole. But any issue of fact that may exist with respect to the fence or power pole is not material. Under the terms of the 1990 stipulated decree, Dahlquist was permanently enjoined from interfering with Vukich's property. By executing and recording the 1998 deed and causing Vukich's tax lot to merge into her own, Dahlquist violated the decree. The trial court did not err in so concluding.

Finally, Dahlquist appears to challenge the validity of the 1990 stipulated decree by claiming that she entered into it under duress. Dahlquist provides no legal argument supporting her claim. Nothing in the record supplies a basis for reexamining an issue Dahlquist previously litigated in 1991.

The doctrine of collateral estoppel prevents "the endless relitigation of issues already actually litigated by the parties and decided by a competent tribunal. Collateral estoppel promotes judicial economy and prevents inconvenience, and even harassment, of parties." *Hadley v. Maxwell,* 144 Wn.2d 306, 311, 27 P.3d 600 (2001) (quoting *Reninger v. Dep't of Corrections,* 134 Wn.2d 437, 449, 951 P.2d 782 (1998)).

A four-part test is applied to determine whether a previous litigation should have a collateral estoppel effect. Collateral estoppel requires: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. *Reninger,* 134 Wn.2d at 449. All of these conditions are met in this case, and as a consequence, Dahlquist is barred from re-litigating her claim to an interest in the property.

All rulings at issue in this appeal are affirmed.

/s/ Becker, C.J.

WE CONCUR:

/s/ [Illegible] /s/ [Illegible]

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

PATRICK VUKICH, Plaintiff, v. BETTY DAHLQUIST, Defendant.	NO. 00-2-08221-5 KNT ORDER OF PARTIAL SUMMARY JUDGMENT/ ON THE PLEADINGS, ORDER IN LIMINE, AND ORDER FOR EXTENSION OF TIME FOR DISPOSITIVE MOTIONS

The Court has considered the motions brought by the Plaintiff, PATRICK VUKICH, including the following documents and exhibits:

Certified Statement of PATRICK VUKICH and the following Exhibits field therewith:

1. Stipulated Decree dated 4-23-90 in King County Cause No. 87-2-15343-9;
2. Order on Civil Motion in same matter (1991) denying recission of Decree;
3. Amended Order on Motion for Summary Judgment dated June 5, 1995 in King County Cause No. 93-2-28320-2;
4. Quit Claim Deed by Betty Dahlquist dated July 1, 1998 (rec # 9808100232);
5. Request for Segregation-Merger;
6. Real Property History from King County Assessor's office;
7. Complaint To Quiet Title And For Slander Of Title And Contempt Of Court; and

8. Defendants 20-Day Response.

The Court has also considered the response of Defendant, and the following documents filed by her:

Response of Defendant with exhibits

The Court finds there is no genuine issue of material fact as to the following elements of Plaintiff's claim and Plaintiff is entitled to an Order finding that:

1. Defendant Betty Dahlquist has no interest in Plaintiff's property (tax lot 262205-9071), as described below, pursuant to previous court adjudication. The court hereby quiets title in and to the following described property in Patrick Vukich:

> The South 432 feet of the West half of the East half of the West half of the Southeast Quarter of the Southwest Quarter of Section 26, Township 22 North, Range 5 East, Williamette Meridian, in King County, Washington, except for the following described tract:
>
> Beginning 888 feet South of the Northwest corner of the West half of the East half of the West half of the Southeast quarter of the Southwest quarter of said Section 26;
> Thence East 92 feet;
> Thence South to the South line of said subdivision;
> Thence West 92 feet;
> Thence North to the point of beginning; and except that portion thereof lying Southerly of the North margin of Southeast 272nd Street (Kent-Kangley Road) as established by Deeds recorded under recording number 2002257 and 2002262.

2. Defendant, BETTY DAHLQUIST, signed a Quit Claim Deed (King County Recording Number 9808100232) purporting to transfer Cecil Martel's interest in PATRICK VUKICH'S property to herself.

3. By previous court adjudication, Cecil Martel had no interest in PATRICK VUKICH'S property.

4. On 4-30-99, BETTY DAHLQUIST filed an application to merge PAT VUKICH'S property with her own adjacent property, resulting in the elimination of tax lot 262203-9071 as a separate tax lot in PAT VUKICH'S name and making it part of the adjacent tax lot owned by BETTY DAHLQUIST.

5. By signing a Quit Claim Deed to PATRICK VUKICH'S property and attempting to merge his property with her own, BETTY DAHLQUIST violated the stipulated Decree dated April 23, 1990, which enjoined her from "trespassing upon, damaging, or interfering with the property of the other parties." Furthermore, to the extent she was purporting to act on behalf of Cecile Martel, she was in violation of the Amended Order on Motion for Summary Judgment filed on June 5, 1995 which permanently enjoined Cecile Martel from "trespassing upon, dumping material, or clouding or encumbering title on, changing assessment information, or otherwise interfering with PATRICK VUKICH'S quiet enjoyment of Lot 71." Betty Dahlquist is found to be in contempt of court for violating said orders. The remedy for her contempt is reserved to trial.

6. The actions of BETTY DAHLQUIST created a cloud on PATRICK VUKICH'S title and hindered his ability to sell his property. The extent of his damages, if any, is reserved to trial.

ORDER IN LIMINE

Defendant is barred from presenting evidence regarding a claim to PATRICK VUKICH'S property by adverse possession based on activities in the 1970's and 1980's. These same issues have been previously adjudicated.

ORDER EXTENDING TIME FOR DISPOSITIVE MOTIONS

The deadline for hearing dispositive motions is extended from August 27 to August 31, when the court has time available to hear the matter, and these matters have been heard on August 31 pursuant to this extension.

Dated this 31st day of August, 2001

/s/ Dean S. Lum
Hon. Dean S. Lum, Judge

Presented By:

/s/ James F. Pleasants
James F. Pleasants #8541
Attorney for Plaintiff

/s/ Patrick Vukich
Patrick Vukich, Plaintiff

Copy Received and approved as to form:

/s/ refused to sign
Betty Dahlquist
Defendant pro se

THE SUPREME COURT
STATE OF WASHINGTON

[SEAL]

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September 30, 2003

Ms. Betty C. Dahlquist
15238 S.e. 272nd St.
Kent, WA 98042

Mr. James Francis Pleasants
Attorney at Law
2100 116th Ave NE
Bellevue, WA 98004-3016

Supreme Court No. 73622-7 Patrick Vukich v. Betty Dahlquist
Court of Appeals No. 48974-7-I

Counsel:

Enclosed is a conformed copy of the Order entered on September 30, 2003, following hearing of the above matter on the Court's September 30, 2003, Motion Calendar.

Sincerely,
/s/ Desireé Chandler
DESIREÉ CHANDLER
Legal Secretary

DRC:drc
Encl.

THE SUPREME COURT OF WASHINGTON

PATRICK G. VUKICH, Petitioner, v. BETTY C. DAHLQUIST, Respondent.	)	No. 73622-7 **ORDER** C/A NO. 48974-7-I

Department I of the Court, composed of Chief Justice Alexander and Justices Johnson, Sanders, Bridge and Owens, considered this matter at its September 30, 2003, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 30th day of September, 2003.

For the Court
/s/ Gerry L. Alexander
CHIEF JUSTICE

(2)

No. 03-942

Supreme Court, U.S.
FILED
MAR 26 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

BETTY C. DAHLQUIST, Pro Se,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Washington State Supreme Court

PETITION FOR REHEARING

BETTY C. DAHLQUIST
Pro-Se, Petitioner
15238 SE 272 Street
Kent, WA 98042
253-631-2906

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATUTES, RULES AND REGULATIONS	iv
UNITED STATES CONSTITUTION	v
PETITION FOR REHEARING	1
STATEMENT OF SUBSTANTIAL GROUNDS OF A CONTROLLING EFFECT (Rule 44.2)	1
CONCLUSION	9
CERTIFICATE OF GOOD FAITH	10

TABLE OF AUTHORITIES

Page

CASES

Abdallah, Inc. v. Martin, 242 Minn. 416, 65 N.W. 2d 641 (Minn. 1954) 7

Adams v. Mignon, 197 Wash. 293, 84 P.2d 1016 (1938) 2

Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 57 S. Ct. 461, 81 L.Ed. 617 (1937) 9

Bowdan – Gazzam Co. v. Kent, 22 Wash. 2d 41, 154 P.2d 292 (1944) 3

Citizens Standard Life Ins. Co. v. Gilley, Tex. Civ. App. 521 S.W. 2d 354 (1975) 7

Collins v. Seyfang, 49 WA 554 (Wash. 1908) 7

Darnell v. Taylor, 236 So. 2d 57 (La. App. 3rd Cir. 1970) 2

Diel v. Beekman, 7 Wash. App. 139, 499 P.2d 35 (1972) 4

El Cerrito, Inc. v Ryndak, 60 Wash. 2d 847, 376 P.2d 528 (1962) 3

Foltz v. Pullman, Inc., 319 A.2d 38 (Del. Super. 1974) 6

Gardner v. Meiling, 572 P.2d 1012, 280 OR 665 (1977) 8

Glidden Co. v. Hellenic Lines, Limited, C.A.N.Y., 275 F.2d 253 (2nd Cir. 1960) 9

Goldstein v. Equitable Life Assur. Sec. of U.S., 160 Misc. 364, 289 N.Y.S. 1064 (1936) 7

Hill v. Weidert (L.W.) Farms, Inc., 75 Wash. 2d 871, 454 P.2d 220 (1969) 4

TABLE OF AUTHORITIES – Continued

Page

Hume v. U.S., 132 U.S. 406, 10 S. Ct. 134, 33 L.Ed. 393 (1889) 8

Hyde v. Lewis, 25 Ill. App. 3d 495, 323 N.E. 2d 533 (Ill. App. 1975) 7

Jacobs v. Phillipi, 697 P.2d 132, 102 N.M. 419 (N.M. 1966) 8

James Talcott, Inc. v. Finley, 389 P.2d 988 (1964) 8

Jenkins v. McKiethen, 395 U.S. 411 (1969) 1, 7

Johnson v. McDonald, 170 Okl. 117, 39 P.2d 150 (Okl. 1935) 7

Ledbetter v. Webb, 711 P.2d 874, 103 N.M. 597 (N.M. 1985) 8

Matteson v. Ziebarth, 40 Wn.2d 286, 242 P.2d 1025 (1952) 6

Mott v. Persichetti, 534 P.2d 823 (Colo. App. 1975) 2

Orwick v. Seattle, 103 Wash. 2d 249, 692 P.2d 793 (1984) 6

Parissella v. Fotopulos, 111 Ariz. 4:522 P.2d 1081 (Ariz. 1974) 8

Remco Enterprises, Inc. v. Houston, 9 Kan. App. 2d 296, 677 P.2d 567 (1984) 8

Robinson v. Hill, 60 Wash. 615, 111 P. 871 (1910) 6

Robinson v. Katz, 610 P.2d 201, 94 N.M. 314 (N.M. 1980) 8

Roy v. Goerz, 26 Wash. App. 807, 614 P.2d 1308 (1980) 4

Royal Petroleum Corp. v. Dennis, 160 Tex. 392, 332 S.W. 2d 313 (Tex. 1960) 6

TABLE OF AUTHORITIES – Continued

Page

Sessions v. Meadows, 13 Cal. App. 2d 748, 57 P.2d 547 (Cal. App. 1936) 7

Spokane v. Catholic Bishop, 33 Wn.2d 496, 206 P.2d 277 (1949) 3

Summerrise v. Stephens, 75 Wash. 2d 808, 454 P.2d 224 (1969) 3

STATE STATUTES

RCW 4.16.020 ..... 3, 4, 7

RCW 4.16.040 ..... 1, 7

RCW 19.36.010 7

RCW 64.08.010 3

RCW 64.08.050 3

OTHER AUTHORITIES

Uniform Commercial Code §§ 2-613, 2-615, 2-616 2

Doctrines of: Frustration of Contract, Impossibility of Performance, Mitigation of Damages, Mutuality of Estoppel, Unconscionability 2, 6, 8, 9

F.R. Civ. P. 8(c) 7

F.R. Civ. P. 19(a) 6

F.R. Civ. P. 41(a) 2

United States Supreme Court Rule 44.2 ..... 1, 10

Washington Civil Rule 9(j) 3

Washington Civil Rule 9(k)(1) 2, 6, 7, 8, 9

Washington Civil Rule 41(a)(4) 4

TABLE OF AUTHORITIES – Continued

Page

Wash. ER Rule 408 5
Wash. ER Rule 803(a)(15) 2
Wash. ER Rule 803(a)(16) 3
Wash. ER Rule 901(b)(4) 1
Wash. ER Rule 902(h) 3

UNITED STATES CONSTITUTION

U.S.C.A. Const. Article 3, § 1 ..... 1, 9

PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner respectfully petitions this Honorable Court for rehearing.

This petition for rehearing is intended to call for the Court to affirm its historical mandate, "Equal Justice Under Law."

In 1969, this Court made an historic decision that "the Court must accept as true all well pleaded allegations of fact and view them in the light most favorable to the petition." See *Jenkins v. McKiethen*, 395 U.S. 411, 421-422 (1969).

To invoke jurisdiction of Federal Court, litigant must have suffered (App. Supp. 25), or be threatened with (App. Supp. 1-9), actual injury (App. Supp. 22-24) traceable to Respondent (App. Supp. 26-30, 10-14) and likely to be redressed by favorable judicial decision (App. Supp. 16-21, 31-33). U.S.C.A. Const. Art. 3, § 1 et seq.

STATEMENT OF SUBSTANTIAL GROUNDS OF A CONTROLLING EFFECT (Rule 44.2)

Following the running of the statute of limitations RCW 4.16.040 (App. Supp. 1-9, 25) (letter of 4/26/99, forensic engineer Gregory A. Marbet verifying "the fracture surface appeared to be the result of an impact as opposed to breakage from wood rot"), Daryl Dahlquist, in accordance with the terms and conditions of the May 5, June 3, and July 12, 1977 correspondence, CR Rule 901(b)(4), replaced the fence and power pole (App. Supp. 15). Then, on January 17, 1987, Vukich, for a second time,

took the fence and power pole down (App. Supp. 10-14, picture #4).

Impossibility of performance of contract. A doctrine under which a party to a contract is relieved of his or her duty to perform when performance has become impossible or totally impracticable (through no fault of the party). The basic Uniform Commercial Code sections dealing with impossibility of performance are §§ 2-613, 2-615, 2-616 (App. Supp. 1-9, 25, 15, 10-14, Picture #4).

Mitigation of Damages, as referred to in the Defendant's Response to Plaintiff's Motion for Summary Judgment, CR 42(d), CR 41(a)(4), i.e., F.R. Civ. P. 41(a), etc., I hereby give notice in accordance with CR 9(k)(1) of the case(s) of *Darnell v. Taylor*, 236 So. 2d 57, 61 (La. App. 3rd Cir. 1970). Mitigation of damages is an affirmative defense and applies when Plaintiff fails to take reasonable actions that would tend to mitigate his injuries. *Mott v. Persichetti*, 534 P.2d 823, 825 (Colo. App. 1975).

Betty Dahlquist's predecessor in interest, Fred and Cecile Martel, are in the chain of title by title insurance (App. Supp. 26-30).

ER Rule 803(a)(15). Statements in Documents Affecting an Interest in Property. In *Adams v. Mignon*, 197 Wash. 293, 303, 84 P.2d 1016 (1938), the Court held that the Trial Court did not err when it admitted an abstract of title into evidence: "The abstract, while not conclusive as to facts shown by the record, was admissible for what it was worth." (See letter dated June 30, 1999 in Petitioners 20-day response.)

Purpose of Limitation Law. Legislative purpose of statutes of limitation is to force claims to be litigated while pertinent evidence is still available and witnesses retain clear impressions of the occurrence involved in litigation. *Summerrise v. Stephens*, 75 Wash. 2d 808, 454 P.2d 224 (1969). (App. Supp. 1-9, 25, 15, 10-14, 26-30).

Betty Dahlquist's predecessor in interest, Fred and Cecile Martel, satisfied the requirements to claim title (App. Supp. 31-33) by adverse possession, specifically satisfying RCW 4.16.020, the ten-year statute of limitations (App. Supp. 16-21). (February 22, 2001, Motion to Reschedule Response to Compel Answers to Interrogatories, etc.). In Sub 27A and in harmony with CR 9(j), pleading private statute at pages 6 of 9 through 8 of 9, (App. Supp. 16-21), Petitioner noted the following five cases:

> (1) Possession of property in adverse manner for period of "ten years" ripens into an original title which can be divested only by such acts as are required to divest title acquired by deed. *El Cerrito, Inc. v. Ryndak*, 60 Wash. 2d 847, 376 P.2d 528 (1962).
>
> ER Rule 803(a)(16) Statements in Ancient Documents. The rule reduces the time limit from 30 to 20 years. Compare *Spokane v. Catholic Bishop*, 33 Wn.2d 496, 206 P.2d 277 (1949).
>
> ER Rule 902(h) Acknowledged Documents. The rule is consistent with RCW 64.08.050. The persons authorized to take acknowledgments are defined by RCW 64.08.010.
>
> (5) Possession to be adverse must have continued for entire statutory period. *Bowdan* –

Gazzam Co. v. Kent, 22 Wash. 2d 41, 154 P.2d 292 (1944).

(6) To establish title by adverse possession, claimants must prove their possession is actual and uninterrupted, open and notorious, hostile and exclusive, under a claim of right made in good faith for the statutory period. *Roy v. Goerz*, 26 Wash. App. 807, 614 P.2d 1308 (1980).

(9) One of the main elements to be considered under RCW 4.16.020 is the elements including whether "possession was adverse or permission" are questions of fact which, when resolved by the trial court, will not be overturned if supported by substantial evidence. *Diel v. Beekman*, 7 Wash. App. 139, 499 P.2d 35 (1972). When the Trial Court's findings as to whether claim based on adverse possession is established or sustained by the record, the Supreme Court will not substitute its judgment thereon. *Hill v. Weidert (L.W.) Farms, Inc.*, 75 Wash. 2d 871, 454 P.2d 220 (1969). (App. Supp. 11-13).

CR RULE 41. Dismissal of Action. CR 41(a)(4) Effect. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

The test to determine adjudication upon the merits, I address Civil Cause 91-2-14190-8. Vukich is the Plaintiff. COMPLAINT TO QUIET TITLE, QUASH QUIT CLAIM DEED, ENJOIN TRESPASS AND FOR DAMAGES FOR TRESPASS (CP 593-616). Betty Dahlquist was named individually and as court-appointed guardian for Fred

Martel as a defendant, and Daryl Dahlquist and Cecile Martel were also named. On May 11, 1993, the case was dismissed (CP 630-638).

Then on November 5, 1993, Vukich presented Betty Dahlquist with a MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT AGAINST BETTY DAHLQUIST and to have the deeds declared null and void (CP 237-252) in the 87-2-15848-9 cause. Said motion was dismissed on January 7, 1994, thus acting as an adjudication upon the merits (App. Supp. 31-33). (See letter dated January 18, 2000.) Both issues, the May 11, 1993 case dismissed and the January 7, 1994 motion denied, are based on and include the same claim.

NOTE: Following the May 11, 1993 case dismissal, Vukich went on to maintain criminal proceedings against Daryl Dahlquist under Seattle District Court Cause No. L 00037745 that, in turn, led to Daryl serving eight and a half months in jail, from September 26, 1994 to May 10, 1995, and then the Order on Commitment was declared null and void, vacated July 6, 1995.

ER Rule 408, fourth sentence, is satisfied by pages 104-106 of the verbatim report of proceedings (Exhibit 6 of the February 22, 2001 Motion to Reschedule Response to Compel Answers to Interrogatories, etc. at page 2, third paragraph). In regards to Vukich's Seattle district court testimony that contradicts the verbatim report of the May 11, 1993 proceeding.

ER Rule 408, fourth sentence, reads: "This rule also does not require exclusion when evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving

an effort to obstruct a criminal investigation or prosecution." This sentence is consistent with the previous Washington law, admitting evidence of compromise, and offers of compromise when offered for some purpose other than liability. Meisenholder § 9. See *Matteson v. Ziebarth*, 40 Wn.2d 286, 242 P.2d 1025 (1952) (to prove lack of good faith where good faith is an issue); *Robinson v. Hill*, 60 Wash. 615, 111 P. 871 (1910) (to prove employer/employee relationship).

"Equitable relief is available if there is no adequate remedy at law." *Orwick v. Seattle*, 103 Wash. 2d 249, 252, 692, P.2d 793 (1984). (App. Supp. 22-24 . . . 16-21, 31-33, Equity acts in personam, the chain of title).

Mutuality of Estoppel Doctrine. This doctrine dictates that, "A judgment will not be held conclusive in favor of one person unless it would be conclusive against him had the case been decided the other way." *Foltz v. Pullman, Inc.*, 319 A.2d 38, 41 (Del. Super. 974) CR 9(k)(1).

Civil Cause No. 93-2-28320-2 CR 19, and F.R. Civ. P. 19(a). "Necessary parties are those who must be included in action as plaintiff (chain of title) or defendant, unless there is a valid excuse for their nonjoinder. Those persons who have such an interest in controversy that a final judgment or decree cannot be made without affecting their interest or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience." *Royal Petroleum Corp. v. Dennis*, 160 Tex. 392, 332 S.W. 2d 313, 314 (Tex. 1960). CR 9(k)(1). (App. Supp. 22-24, 26-30, 25, 15, 10-14, picture #4 . . . 16-21, 31-33).

Fraud in fact and in law (RCW 4.16.020, RCW 4.16.040) and RCW 19.36.010, Statute of Frauds, originally passed in 1677, reference to Vukich's alleged verbal agreement with Fred Martel, and Petitioner's signature on stipulated decree from Cause No. 87-2-15848-9 was obtained by duress, and as a defense to a civil action, it must be pleaded affirmative. F.R. Civ. P. 8(c), "The Court must accept as true all well-pleaded allegations of fact and view them in the light most favorable to the Petitioner." *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969). For more than 20 years, this decision has been used as a basic ruling in viewing a complaint when a motion to dismiss a claim for failure to state a claim is presented.

> "Dahlquist challenges the validity of the 1990 stipulated decree by claiming that she entered into it under duress." She has cited in her 20-day response, Civil Rule 9(k)(1), the following 13 cases:
>
> *Sessions v. Meadows*, 13 Cal. App. 2d 748, 57 P.2d 547, 548 (Cal. App. 1936);
>
> *Collins v. Seyfang*, 49 WA 554, 95 p. 1088, 1089 (Wash. 1908);
>
> *Hyde v. Lewis*, 25 Ill. App. 3d 495, 323 N.E. 2d 533, 537-539 (Ill. App. 1975);
>
> *Abdallah, Inc. v. Martin*, 242 Minn 416, 65 N.W. 2d 641, 644-645 (Minn. 1954);
>
> *Goldstein v. Equitable Life Assur. Sec. of U.S.*, 160 Misc. 364, 289 N.Y.S. 1064, 1067 (1936);
>
> *Johnson v. McDonald*, 170 Okl. 117, 39 P.2d 150 (Okl. 1935);
>
> *Citizens Standard Life Ins. Co. v. Gilley*, Tex. Civ. App., 521 S.W. 2d 354, 356 (1975);

Parissella v. Fotopulos, 111 Ariz, 4:522 P.2d 1081, 1083 (Ariz. 1974);

Ledbetter v. Webb, 711 P.2d 874, 103 N.M. 597 (N.M. 1985);

Jacobs v. Phillipi, 697, P.2d 132, 102 N.M. 419 (N.M. 1966);

Robinson v. Katz, 610 P.2d 201, 94 N.M. 314 (N.M. 1980);

James Talcott, Inc. v. Finley, 389 P.2d 988 (1964),

Gardner v. Meiling, 572 P.2d 1012, 280 OR 665 (1977).

Unconscionable bargain or contract. A contract, or a clause in a contract, that is so grossly unfair to one of the parties because of stronger bargaining powers of the other party; usually held to be void as against public policy. An unconscionable bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept on the other. *Hume v. U.S.*, 132 U.S. 406, 10 S. Ct. 134, 33 L.Ed. 393 (1889), Civil Rule 9(k)(1).

Unconscionability. A doctrine under which courts may deny enforcement of unfair or oppressive contracts because of procedural abuses arising out of the contract formation, or because of substantive abuses relating to terms of the contract, such as terms which violate reasonable expectations of parties or which involve gross disparities in price; either abuse can be the basis for a finding of unconscionability. *Remco Enterprises, Inc. v. Houston*, 9 Kan. App. 2d 296, 677 P.2d 567, 572 (1984), Civil Rule 9(k)(1).

Frustration of contract. This doctrine provides, generally, that where existence of a specific thing is, either by terms of contract or in contemplation of parties, necessary for performance of a promise in the contract, duty to perform promise is discharged if thing is no longer in existence at time for performance. *Glidden Co. v. Hellenic Lines, Limited, C.A.N.Y.*, 275 F.2d 253, 255 (2nd Cir. 1960), CR 9(k)(1) (App. Supp. 1-9, 25, 15, 10-14 . . . 16-21, 31-33).

Article III of the Constitution denies Federal Courts power to decide questions that cannot affect rights of litigants in case before them, and confines them to resolving "real and substantial controversies admitting of specific relief through decree of conclusive character as distinguished from opinion advising what law would be upon hypothetical state of facts." U.S.C.A. Const. Art. 3, § 1 (quoting *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 241, 57 S. Ct. 461, 464, 81 L.Ed. 617 (1937).

CONCLUSION

For the foregoing reasons, the Petition for Rehearing should be granted and the petition reconsidered.

Respectfully submitted,

BETTY C. DAHLQUIST
Pro-Se Petitioner
15238 SE 272 Street
Kent, WA 98042
253-631-2906

CERTIFICATE OF GOOD FAITH

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

_____

Betty Dahlquist

LOUTHAN, COMPTON & MOE*
ATTORNEYS

6½ Boston
Queen Anne Hill
Seattle, WA 98109
(206) 685-1084

May 5, 1977

Fred Martell
15328 S.E. 272nd
Kent WA 98031

Dear Mr. Martell:

I am writing at the request of Patrick Vukich regarding a Mobile Home which you have on your property adjacent to Mr. Vukich's property.

Late last year Pacific Northwest Bell, at your request, installed telephone service on the rear of your property. In doing so Bell buried lines across Mr. Vukich's property. A dispute has arisen with Bell which led Mr. Vukich to have his property surveyed.

As a result of the survey it was discovered that the Mobile Home located on the Northeast Corner of your property, commonly known as 15328 S.E. 272nd, Kent WA, is astraddle of the property line common to you and Mr. Vukich. The Mobile Home encroaches on Mr. Vukich's property along its length by approximately six feet. A

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* Any typographical and/or incorrect punctuation found in the following Appendix pages were left intentionally to show accurately how the original documents appeared.

photo copy of the survey report is enclosed which illustrates the encroachment.

Demand is hereby made that you remove the Mobile Home from Mr. Vukich's property. If it is not promptly removed it will be necessary to institute suit for its removal and for damages.

Sincerely,

Louthan, Compton & Moe

/s/ Richard Louthan
Richard Louthan
RL:cw

cc: Patrick Vukich

LAW OFFICES

CURRAN, KLEWENO, JOHNSON & CURRAN
213 4TH AVENUE SOUTH
POST OFFICE BOX 26
KENT, WASHINGTON 98031

JAMES P. CURRAN
CHARLES PETER CURRAN
MELVIN L. KLEWENO, JR.
STEPHEN L. JOHNSON
THOMAS O. MCELMEEL

TELEPHONES
(206) 852-2345
(206) 852-2346

June 3, 1977

Louthan, Compton & Moe
Attorneys at Law
6-1/2 Boston
Queen Anne Hill
Seattle, WA 98109

RE: Fred Martell
Our File 2230 jam

Attention: Mr. Richard Louthan

Dear Mr. Louthan:

This letter is in response to your letter of May 5, 1977, directed to our client, Fred Martell, of Kent, Washington. Please accept my apology for the delay in responding to the letter. I wanted to be able to meet with my clients and inspect the property before making a decision as to their responsibility.

After inspection and consultation with our client, I have determined the following things to be factual:

1. Our clients bought the property on which the trailer is located, and about which you complain, in September, 1953.

2. The property then purchased was supplemented by a parcel southerly and along Southeast 272nd Street, SSH #5, acquired April, 1955.

3. These two parcels form a common boundary line with Mr. Vukich's property, being our client's east boundary line and your client's west boundary line.

4. At the time our clients purchased their property, there was a trailer pad already installed at the location where the subject trailer now rests. Since the date of purchase, there has been a trailer occupying that pad almost continuously to the present date. Non-occupancy was only by virtue of change of tenants as to that pad.

5. East of the trailer pad and running in a generally northerly and southerly direction is an existing fence. This fence extends generally southerly from the north line of our client's property for approximately 75' to 100'.

6. The north terminus of this fence was located to correspond with a stake which the sellers pointed out to our clients as being the boundary stake between the property they purchased and the property occupied by your client.

7. Since the time of the purchase of the property, our clients have not only occupied the trailer pad, but have cared for and maintained the property and also used the property for driveway purposes up to the existing fence.

8. During all of the period of time since 1953, they have also believed and claimed that they owned this parcel of property.

9. Our clients did not authorize Pacific Northwest Bell to install the telephone service you mention in your letter.

It is my understanding from interview of our clients, that your client purchased the property he now occupies to the east of our client's property approximately two years ago. The trailer, trailer pad, driveway and fence were all there at the time of his purchase. Neither he nor any prior owner ever asserted a right to the property in question and about which you complain until a short time before the receipt of your letter.

From the foregoing facts and assuming the survey stake located by someone at your client's request is accurate, I have concluded as follows:

That our client has occupied and possessed the property under claim of right for longer than the period required by the adverse possession statute and doctrine of the state of Washington, and therefore owns the property.

Further, that our clients have the continued right to occupy such property without interference by Mr. Vukich in the future.

I therefore urge you to advise Mr. Vukich to accept the boundaries as long established on this parcel of property and not to institute suit for the removal of subject trailer, as threatened by your letter of May 5, 1977. If you disagree with these facts and the conclusion which I have drawn, I would be pleased to hear from you and have you set forth the facts on which you would base such a disagreement. I would hope that no precipitous suit would be

commenced which would be extremely costly to both your client and our clients.

Very truly yours,

CURRAN, KLEWENO, JOHNSON & CURRAN

/s/
James P. Curran

JPC:jb

July 12, 1977

Mr. Richard Louthan
Attorney at Law
6-1/2 Boston
Queen Anne Hill
Seattle, WA 98109

RE: Fred Martell
Our File 2230 jam

Dear Mr. Louthan:

This is to confirm my telephone conversation with you on July 11, 1977. On that date, your client, Mr. Vukich, came upon the property of Mr. and Mrs. Martell and accosted Mr. Martell, who was working at the time.

At that time, among other things, he demanded one-half of the rent on the trailer on the northeast corner of the property. He also stated that he was going to take a bulldozer and bulldoze everything off to his boundary line as set by the survey, and made other threats.

In addition to Mr. Martell, these threats were heard by Mr. Floyd Anderson who occupies a trailer space on the property.

I must advise you that if any of the threats made are carried out in any way, it will be necessary to hold Mr. Vukich responsible in damages for all costs and expenses incurred as a result of any overt act since he has full knowledge of the disputed boundary line.

I have also questioned Mr. and Mrs. Martell about the telephone line and have determined that you are correct. After the line was first located by the telephone company on Vukich's property, it was later relocated and at that time Mr. Martell did inform the telephone company that

the place where the line is now located was his boundary line. This only confirms his longheld belief that hs boundary line was further east than the survey stake.

With reference to your statements about the trailer occupying the northeast corner, I have gone into that more thoroughly and wish to advise you as follows:

1) All trailers that have occupied that space have been directly adjacent to and in line with a concrete patio which was installed there more than 20 years ago.

2) The space is presently occupied by Mr. Judson, whose trailer has been there for more than 4 years. This trailer is approximately 25 feet long.

3) Prior to that the space was occupied by Virginia and Terry Steel, who had a longer trailer, approximately 45 to 50 feet. They occupied the space for 7 or 8 years.

4) The immediate prior tenant to the Steels was Mr. and Mrs. Blevins, who had a 45 foot trailer and occupied it for an extended period of time.

In light of the foregoing, I do not believe that the conclusions I reached in my prior letter have changed by anything that has been stated by you. As we agreed, it would be very detrimental and damaging and costly to have Mr. Vukich commence any precipitous action on his own. Further, this case does not warrant a lawsuit and should be somehow adjusted in an amicable manner. If there is anything further I can do to aid in solving the problem, I

will be willing to, but it must be short of moving the existing trailer at the northeast corner.

Very truly yours,

CURRAN, KLEWENO, JOHNSON & CURRAN

James P. Curran

JPC:jb

January 1, 2000

Mr. Dennis Pflug
Attorney at Law
10757 – 22nd Avenue S.W.
Seattle, WA 98146-1916

Governor Gary Locke
Legislative Building
Olympia, WA 98501
~~Z 263 184 224~~ Z 234 212 133

Jerome Rosen
301 South 320th
Federal Way, WA 98003
Attn: Mental Health Dept.

~~Columbia Legal Services~~
~~101 Yesler Way, Suite 301~~
~~Seattle, WA 98104~~

Mr. James Pleasants
Attorney at Law
4122 – 128th Avenue SE, #301
Bellevue, WA 98006
~~Z 263 184 223~~ Z 234 212 132

Office of Prosecuting
Attorney-Tort Section
Claim No. 24326
Sandra Courtway,
Investigator
City of Seattle
3900 Key Tower
Seattle, WA 98104
~~Z 263 184 225~~ Z 234 212 131

Brian Whitson
South County Journal
PO Box 130
Kent, WA 98~~501~~ 031

In the sixth edition of Black's Law Dictionary at page 1519, it defines the two witness rule:

> "This rule requires that falsity element of a perjury conviction be supported either by direct testimony of two witnesses or by direct testimony of one witness plus independent corroborating evidence." (People v. Fueston, Colo. App., 717 P.2d 978, 990)

The issue being addressed here is that – today's date is January 1, 2000. Turning the clock back (legal memory) to 14 years earlier to the spring of 1986, when I, Daryl, was asked by my grandparents, Fred and Cecile, to build a fence, I proceeded to build what I refer to as Fence #1. Shortly after Fence #1 was built, I was told be Cele Abel that Pat Vukich was on the phone and when I asked him

"what seems to be the problem", Pat Vukich told me over the phone, "You'd better watch your back." Eventually I took Fence #1 down.

After removal of Fence #1, I proceeded to build Fence #2, which was eventually torn down in the middle of the night. Picture No. #2 shows what was left of Fence No. 2.

Then there was the incident of August 25, 1986, mentioned in my previous letter of September 14, 1999, where Pat Vukich talked to me, the final result of which was Pat saying, "Fuck me three times and I'm gonna' fuck you." Said exhibit is noted as Exhibit 17 on the back of page 1 in my September 14, 1999 letter.

On September 4, 1986, I had Lot 9071 surveyed and then, after reading the letters of June 3, 1977 and July 12, 1990 77 (noted in my April 12, 1999 letter marked as Exhibit 2 and Exhibit 3), I proceeded to build Fence #3. And on January 17, 1987, at 12 noon, Pat Vukich took his bulldozer and bulldozed Fence #3 down as is noted in Picture No. #4. And then and there he told me, "You have one day to remove it or it's mine."

It is to be noted that Parcel B and Tax Lot 9071 are the same. Then, on March 3, 1987, under Aukeen District Court No. 1002264, Pat Vukich testified in the criminal proceedings against me under oath when asked, as follows:

> "Q: Have you ever allowed the Martel's to ever use any of Parcel B?
>
> A: No."

The reason for mentioning the three fences as well as the testimony of Pat Vukich as of March 3, 1987 is the fact that there was never, ever any mention by Pat Vukich of any so-called verbal agreement during the issues with the

first, second or third fence. Then Pat Vukich changed his whole testimony some 904 days later (87-2-15848-9) during the civil trial on August 23, 1989, where Pat Vukich stated for the record when asked:

"Line 15: Q. Alright. When you found out where
Line 16: the line was and you saw the encroaching trailer, what did you do?

Line 17: A. I had a conversation with Mr. Martel and came to an agreement with Mr.
Line 18: Martel.

Line 19: Q. (by Mr. Graham) You had a conversa-
Pg. 11 Line 1: tion with Mr. Martel?

Line 2: A. Uh-huh.

Line 3: Q. What did you say to Mr. Martel?

Line 4: A. That's what I just said that I told

Line 5: Mr. Martel that I would like the trailer moved when

Line 6: Mr. Jodson moves off the property.

Line 7: Q. And then what did Mr. Martel say?

Line 8: A. He agreed."

See April 12, 1999 letter for more specific details.

Again, on page 1515 of the 6th edition of Black's Law Dictionary, it defines the word truth as:

> "There are three conceptions as to what constitutes "truth": agreement of thought and reality; eventual verification; and consistency of thought with itself."

Page 1477. Theft by deception. Under Model Code § 223.3, a person is guilty of theft by deception if he purposely obtains property of another by deception.

Theft by false pretext.

> "Obtaining property by means of false pretext with intent to deprive owner of value of property without his consent and to appropriate it to own use. Followed by such appropriation." Hoovel v. State, 125 Tex. Cr. R 545, 69 S.W. 2d 104, 106.

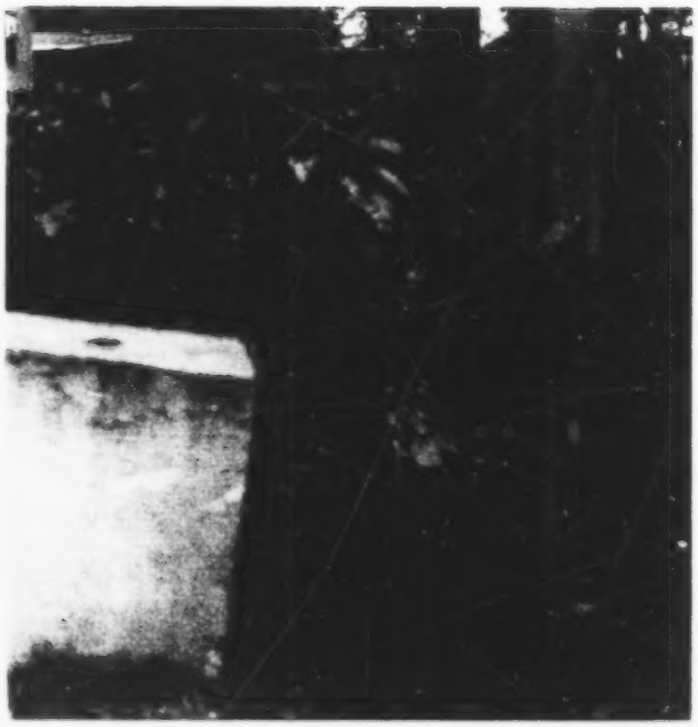
As of today's date, January 1, 2000, Pat Vukich has taken 100% possession of Parcel B, Lot 9071, and has erected a six-foot chain link fence. Additionally, he has obtained a civil judgment against me (under color of official right), and yet through the above noted facts I have satisfied the requirements to the two witness rule as is defined by Black's Law Dictionary, noted above.

/s/ Daryl Dahlquist CP 222
Daryl Dahlquist
Time 10:46 am at Suden printing 1-6-00
at 104th and 272nd
original sent to G. Locke.

#1

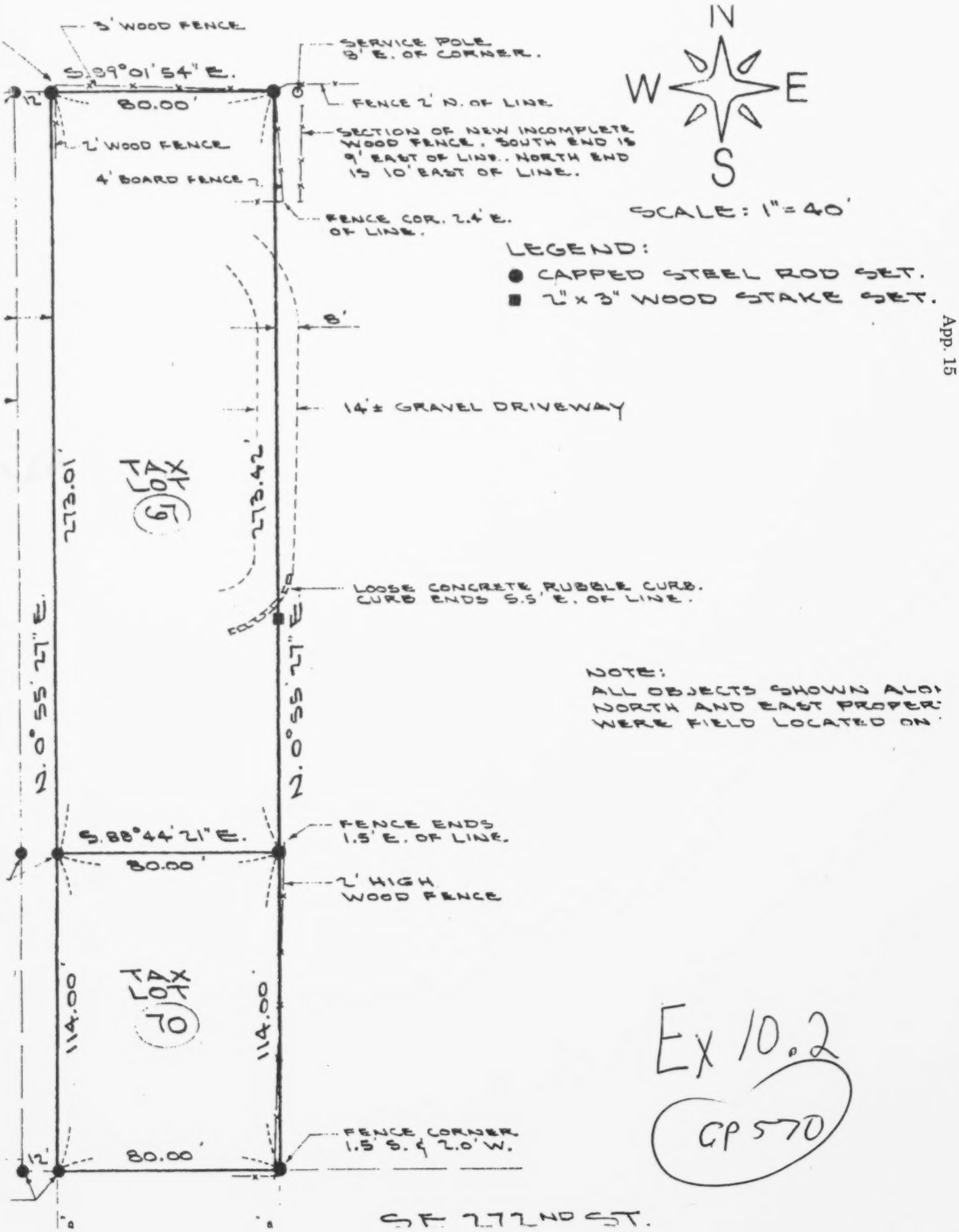
#2

#3



#4

(274) -275



NOTE:
ALL OBJECTS SHOWN ALOI
NORTH AND EAST PROPER
WERE FIELD LOCATED ON

Ex 10.2
CP 570

SF 7772ND ST.

EXCERPT OF MOTION TO RESCHEDULE RESPONSE TO COMPEL ANSWERS TO INTERROGATORIES, ETC.

February 22, 2001

AT page 3 line 16 thru line 22 it reads

> BETTY DAHLQUIST has framed a set of Interrogatory questions which attempt to address the substance of the previous adverse possession litigation, in an apparent effort to again re-open that litigation. Mr. VUKICH has objected to such questions on grounds of relevance. BETTY DAHLQUIST has no interest in this property as a matter of law.

WITH reference to the statement that BETTY DAHLQUIST has no interest in this property as a matter of law. I BEETY DAHLQUIST declares posatively in accordence with CR 9 section (J) Pleading private statute RCW 4.16.020 the law of adverse possession as defined under said statute and declares as follows;

(1) possession of property in adverse manner for period of "ten years" ripens into an original title which can be divested only by such acts as are required to divest title acquired by deed. (El Cerrito, Inc. v Ryndak (1962) 60 Wash. 2d 847, 376 P2d 528

(2) to satisfy the required "ten year" period as is defined under RCW 4.16.020 is as follows;

(3) the obligation of the the "ten year" period is met and satisfied in accordence with ER 803(a)(16) by the two page May 31st 1991 affidavit of the grantor herself BETTY DAHLQUIST mother CECILE MARTEL as is described in Exhibit 21 attached and incorporate ex 21 herien by

reference, who Cecile by verifying that it was she who filled out each of the individual rent reciets for Lorean Judson the tenant of space #7 at the Martels trailer park from 1/7/74-8123 up to 4/1/84-1359 a total of ten years and four months worth of individually written rent reciets also noted attached to Ex 21 is a (10 of 6) March 16th 1993 affidavit also of Cecile E. Martel covering all 27 years worth of rent reciets ofr space #7 and in harmony with the correspondence of May 5th, June 3rd, & July 12th of 1977. And said rent reciepts are available for inspection at any time upon proper notice.

(4) also meeting the obligation for a second time and supporting the "ten year" period required under RCW 4.16.020 is the July 9, 1991 3 page leter from Puget Power verifying the light bill for Lorean Judson of his tenancy at 15238 S.E. 272nd St Kent RV start date 01/08/74, stop date 07/01/84 as is noted in my May 5th 2000 20 day response marked as exhibit 31 please incorporate exhibit 31 herien by reference and is in harmony with ER 902(h).

(5) Possession to be adverse must have continued for entire statutory period. (Bowdan-Gazzam Co. vs Kent (1944) 22 Wash. 2d 41, 154 P.2d 292) See Exhibits 21 and 31 noted in sections (3) & (4) above

(6) To establish title to adverse possession, claimants must prove their possession is actual and uninterrupted, open and notorious, hostile and exclusive, under a claim of right made in good faith for the statutory period. (Roy v. Goerz (1980) 26 Wash. App. 807, 614 P.2d 1308).

(7) satisfying the obligation that the claimant must prove the fact the the "possion is actual" under the requirements of RCW 4.16.020 is met and satisyed by the actual proof of the actual occupency itself of tax lot 9071

by the grantors tenant of the Martels trailer park Lorean Judson and of which is in accordence with ER 902(d) a certifyed copy is attached as Exhibit 1 the February 14th, 1977 survey of Laurence F. Dixon of which said occupancy is noted in the survey at the northwest corner 20' mobile home. And also noting said occupance is the 7/11/81 L.F.D. 3 additional updates as is noted in EX 7-11-81 attached the original survey provided by Vukich and is filled filled with the motion. Please incorporate exhibits 1 and exhibits 7/11/81 attached herien by reference as if set fourth in full.

(8) To satisfy the wording of the term under R.C.W. 4.16.020 "made in good faith" for the statutory period this obligation is accomplished by the defendant, in accordence with The Washington State Court Rules under CrR 7.8(b)(3) and ER 408 4th sentance and "fraud" is to be declared positively in accordence with CR 9(b) BY THE FOLLOWING EXHIBIT DESCRIBED AS EXHIBIT .5.

8.1) Attached as exhibit 38 is the 21 page TRANSCRIPT OF PROCEDINGS by Rose Landberg dated 3/15/93 with exhibit PLAINTIFFS EXHIBIT I002264 #5 attached and of which plaintiff Vukich testifyed against my son Daryl Dahlquist at page 4 at the 5th Question

Q: Showing you what has been marked Plaintiff's Exhibit No. 5 for identification purposes, without telling or publishing the contents of this, can you identify it?

A. This is a document that I got from Williams and Roth Associates who is, ther,re engineers for Cascade Sewer District. This is their survey that they took replacing the survey stakes that were in prior to the sewer district

coming in and removing them with their equipment.

Q: When would that be?

A: 1983.

Q: Is that a true and correct copy?

A: Yes it is.

Q: At this time the State would move to admit this.

Court: Any objection?

Defense: No objection.

The Court: All right. Admit No. 2.

The main point I trying to adress here is this Exhibit No. 5 dated 4-14-83 in the bottom right hand corner clearly can be seen that it portrays a clear survey as of April 14, 1983, that is "no occupancy appears" IN EXHIBIT 5 which is the the work product of exhibit 4 the July 8, 1991 leter that was provided to my son Daryl by Marri Lynn Aguilar, the Senior Development Coordinator with Soos Creek Water and Sewer District. In exhibit 4 we can see that it in turn is supported in exhibit 5 were it states "Note boundary shown herien is taken from survey furnished by Vukich." The only problem with the survey in exhibit 5 is that it shoud stil show the trailer as is noted in Exhibit 1 dated February 14th 1977 as exhibit 7/11/81 the L.F.D. update because the trailer in exhibits 1 and 7/11/81 should also be noted in exhibit 5 because it is still there as is noted in exhibits 21 and 31 noted in sections (3) and (4) above.

So the defendent Betty Dahlquist thru her son Daryl Dahlquist believes it should be very clear for all to see that my son was denied a fair trial on March 3, 1987 as a result of plaintiff Vukich's own testimony and fraudulent misrepresentation of exhibit 5 that is documented in exhibit 38 at page 4 attached. Not only was the trial judge and jury decieved but my son was also because as of April 14 1983 Lorean Judson was still a tenant of space #7 at the Martels trailer park and therefore I believe I have meet the obligation beyond a reasonable doubt in satisfying the meaning of the term found in RCW 4.16.020 "made in good faith"

(9) One of the main elements to be considered under RCW 4.16.020 is the elements including whether "possession was adverse or permission" are questions of fact which, when resolved by the trial court, will not be overturned if supported by substantial evidence. (Diel v. Beekman (1972) 7 Wash. App. 139, 499 P.2d 35). And to meet this requirement of non permisive youse is documented in exhibit 38 at page 2 in question number 7 plaintiff Vukich testifyed

Q: Have you allowed the Martels to ever youse any of Parcel B?

A: No.

When the trial courts findings as to whether claim based on adverse possession is established or sustained by the record, the Supreme Court will not substitute its judgement thereon. (Hill v. Weidert (L.W.) Farms, Inc. (1969) 75 Wash. 2d 871, 454 P.2d 220). Again plaintiff Vukich testifyed for the record a second time when asked by the prosecuting attorney, Bruce Myokie (exhibit 38, page 10)

Q: "You have never given the defendent any permission to come on your property?"

A: "Absolutely not."

(10) A claim to land based on adverse possession requires the claimant to have maintained "actual possession" (Ex 1 and 7/11/81) that was uninterrupted (Exs 21 and 31 noted in sections (3) & (4) above) open and notorious and eclusive made in "good faith" (CrR 7.8(b)(3) ER 408 4th sentance) for the statutory period.

BETTY DAHLQUIST'S Motion to compel answers to interrogatories should be granted.

RESPECTFULLY RESUBMITTED this 22nd day of February 2001

/s/ Betty C. Dahlquist
Betty C. Dahlquist
15238 S.E. 272nd st
Kent Wa 98042
(253) 621-2906

/s/ Daryl L. Dahlquist
Daryl L. Dahlquist
res gestae witness. and
by general power of
attorney

[LOGO] SOUND LAW GROUP PLLC

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Lex Mathis
206-767-1688
lex@soundlawgroup.com

227 South Orcas St.
Seattle, WA 98108
206-767-1155
Facsimile:
206-767-1161
soundlawgroup.com

December 2, 2003

VIA FIRST CLASS MAIL

Mr. Christopher Steuart
1220 SW Webster Street, Suite B
Seattle, WA 98106

RE: Vukich v. Dahlquist; 50704-4-I

Dear Mr. Steuart:

We conferred with David Newberry of Newberry Reality who advised us that the sale of Mr. Dahlquist's property was referred to you. We have listed below our understanding of the outstanding liens on the property. If you have any questions, disagree or wish to contest any of them, please advise us accordingly.

Total:	$495,000
– 1/3 (Bid $10,000 of prior judgments*)	$165,000.00=$330,000.00
– 1-31-02 judgment	$64,239.32=$265,760.68
– Interest at 12% 2002	$7,708.72=$258,051.96
– Interest at 12% 2003	$6,423.93=$251,628.03

– Attorney Fees for Appeal	$3,205.98=$248,422.05
– Residual of Prior Judgments Minus bid price for 1/3*	$42,877.24=$205,544.81
Interest to date from residual balance from Jan 16, 2002, for Dahlquist	$9,432.99=$196,111.82

A failure to honor these will result in a cause of action for fraud against all those involved. Our client made an offer on the property for the asking price of $495,000. There is some room to negotiate assuming the offer is accepted on or before December 9, 2003. Our client is also willing to forego future liens and attorneys fees should this matter be amicably resolved. If we do not hear from you on or before this date we will assume you do not wish to cooperate.

Should you fail to respond we will proceed with obtaining an additional judgment and award of attorneys fees from the Supreme Court which we will then add to the above-referenced liens. At that time we will conduct another sheriff's sale for the remainder of the property to collect only upon the recently obtained judgment. At that time, we will use the residual judgment to attach any remaining property of your client. Further, if you do not cooperate in the sale, we will initiate a forced sale of the property once all the above-referenced liens have been perfected.

On a practical note, if your client fails to cooperate, he will lose everything and get very little compensation. If he cooperates he will get in excess of $175,000. We feel this would be an excellent transaction for all parties to go their separate ways and end nearly thirty years of feuding.

I cannot stress enough how seriously we take our client's rights and will vigorously pursue this matter as stated.

Sincerely,

SOUND LAW GROUP, PLLC

Lex Mathis

LM

cc: Patrick Vukich
Betty Dahlquist
Daryl Dahlquist
David Newberry

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

RAYMOND GROOMS, being first duly sworn upon oath, deposes and states as follows:

I am not related to Daryl Dahlquist or the Martels and I have no interest in their dispute. I am competent to be a witness herein.

I recall a two foot high double rail fence at the northeast corner of the Martel property about forty feet long. I do not recall when it was gone. On or about May 1, 1984, I saw Mr. Vukich pull out the power pole at the northeast corner of the Martel property.

I do not want to appear in court because it would make Mr. Vukich mad, and I do not want any trouble.

/s/ Raymond Grooms
RAYMOND GROOMS
Address:

SUBSCRIBED AND SWORN TO before me this 24 day of July, 1987.

/s/ [Illegible]
NOTARY PUBLIC in and for the State of Washington, residing at Kent. My Commission Expires: 1/1/91.

No. 872158489
Dahlquist
Plaintiff

Vukich
Defendant

WASHINGTON TITLE INSURANCE COMPANY

803 SECOND AVENUE

MAIN 1534

SEATTLE 4, WASHINGTON

REFER TO

B-490113
U-5

Canyon Mill Co.,
Kent, Washington

Tacoma Savings and Loan Association
Tacoma, Washington

This is a report as of April 6, 1955 at 8 a.m. for $7100.00 mortgagee's policy, A.T.A. form, insuring Tacoma Savings and Loan Association, a Washington corporation, covering the following property:

> South 160 feet of the east 80 feet of the west 92 feet of the west half of the east half of the west half of the southeast quarter of the southwest quarter of section 26, township 22 north, range 5 east, W.M., in King County, Washington; EXCEPT roads.

Title is vested in FRED J. MARTELL and CECILLE E. MARTELL, his wife.

Subject to:

1. General taxes for the year 1955 payable in the sum of $13.52 on said premises and other property (being Tax no. 58).

2. Easement for water pipe line located in the southeast corner of said premises as disclosed by instrument dated March 29, 1955, recorded April 5, 1955, under auditor's file no. 4558406.

3. Reservations contained in deed from Herbert S. Upper, recorded February 18, 1902, under auditor's file No. 226333, substantially as follows:

   Excepting and reserving from said lands such as are now known or shall hereafter be ascertained to contain coal, iron, oil or gas, and also the use of such surface ground as may be necessary for mining operations, and right of access to such reserved and excepted coal, iron, oil and gas lands for purpose of exploring, developing and working the same.

4. Questions of survey, rights of persons in possession, material or labor liens and any impairment of existing improvements by reason of the easement noted in paragraph 2, disposition of which will be determined by our further inspection, and survey if necessary, of the premises.

   NOTE: Our inspection made April 4, 1955 disclosed:

   Encroachment by driveway a maximum of 2.0 feet, more or less, east of west property line; Fence a maximum of 7.0 feet, more or less, south of north property line; and power pole 9.0 feet, more or less, south of north line and 21.0 feet, more or less, east of west line.

   Premises to be unimproved;

   No improvements within the last 90 days;

   Question of easement to be determined later.

This report shall have no force or effect except as a basis for the policy applied for.

/s/ Robert Carlson
Assistant Secretary

PREMIUM: $38.25
RSJ:et

[SEAL]

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I, M., JANICE MICHELS, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is true perfect transcript of said original and of the whole thereof, in TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office in Seattle on the day of Jul. 25, 1991.

M. JANICE MICHELS, Superior Court Clerk

By /s/ [Illegible]
Deputy Clerk

EXCERPTS OF LETTER DATED JUNE 30, 1999

AMENDED RESPONSE TO INTERROGATORY NO. 38:

Only the First American Title Report. Disclosed that legal title was held by John C. Kolstad, subject to a real estate contract to Patrick Vukich. Also disclosed a Quit Claim Deed to Daryl Dahlquist from Cecile Martel as to Parcel B, but that she had no interest in Parcel B. Also disclosed surveys and easements of record.

(Amended response s of 6-10-94)

INTERROGATORY NO. 39: With reference to defendant's (Exhibit 27, 2 of 2) paragraph 4, question of survey, rights of persons in possession, what do you believe is meant by the words "Question of Survey, Rights of Persons in Possession"? (For the purposes of this interrogatory, you are not being asked to give a legal opinion, but only to describe your understanding of the facts as they apply to the basis of your complaint.)

ANSWER: Exhibit not provided. Plaintiff objects to question as the words were not prepared by him, to the best of his knowledge. (Production #1 served on 1-7-94; answered on 3-3-94)

AMENDED RESPONSE TO INTERROGATORY NO. 39:

Supplementation. I have found the exhibits. Plaintiff has no knowledge of what this means. Plaintiff's attorney has explained that this is an exception to what the Title Insurance Co. will insure.

(Amended response as of 6-10-94)

Defendant's Third Interrogatories & Requests for Admission 1 through 24 Page 52 of 104 as of September 15, 1994

DARYL L. DAHLQUIST
15250 SE 272nd Street
Kent, WA 98042
(206) 630-4764

[LOGO] **PIONEER NATIONAL TITLE INSURANCE**
A TYCOR COMPANY

REVENUE STAMPS

Filed for Record at Request of

AFTER RECORDING MAIL TO:

CECILE E. MARTEL

15238 S. E. 272nd Kent

Washington 98042 #631-2906

ORIGIONAL

91/04/17 #0775B
RECFEE 2.00
recd f 5.00
CASH SI ****7.00
55

THIS SPACE RESERVED FOR RECORDER'S USE

KING COUNTY
NO EXCISE TAX DUE
Apr. 17, 1991
E1184311

FORM L 56 R

Quit Claim Deed

THE GRANTOR FRED J. MARTEL, as his separate estate, for and in consideration of LOVE AND AFFECTION convey and quit claim to CECILE E. MARTEL, as her separate estate, the following described real estate, situated in the County of KING state of Washington, State of Washington including any interest therein which grantor may hereafter acquire:

The following described real estate, situated in the County of (King), together with all after acquired title of the grantor(s) therein:,

The South 432 feet of the west half of the east half of the west half of the Southeast quarter of the Southwest quarter of Section 26, Township 22 North, Range 5 East, W.M. in King County, Washington, except the following describe tract

Beginning 888 feet of the South of the Northwest corner of the west half of the east half of the west half of the Southeast quarter of the Southwest quarter of said Section 26; . . . Thence East 92 feet; . . . Thence South to the South line of said subdivision; . . . Thence West 92 feet; . . . Thence North to the point of beginning; . . . and excepting the North 16 feet of the South 46 feet thereof conveyed to King County for roads, by deeds recorded under Auditors File # number, 2002257 and 2002262 and except that portion lying within Kent-Kangly Road,

Dated this 15th day of April, 1991,

/s/ Betty C. Dahlquist . . . . . [SEAL]
BETTY C. DAHLQUIST (individual)
FRED J. MARTEL, by BETTY C. DAHLQUIST
s court-appointed guardian for FRED J.
MARTEL. . . . . [SEAL]

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

[SEAL]

On this day personally appeared before me BETTY C. DAHLQUIST, in her capacity as court-appointed guardian for FRED J. MARTEL, to me and to be the individual described in and who executed the within and foregoing instrument, and acknowledged there she

signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15th day of April 1991.

/s/ Caroline J. Hight
Notary Public in and for the State of Washington residing at Seattle
MY COMMISSION EXPIRES:
12-27-93